



Utah Residential Mortgage Practices Act

by Ted Boyer,
Division Director

During the 2000 Legislative Session, House Bill 107, the Utah Residential Mortgage Practices Act (the "Act") was passed in the House by a vote of 63 to 1 and in the Senate by a vote of 27 to 0. Representative Gerry A. Adair

sponsored the bill. Representative Adair is both a real estate broker and an appraiser. The Utah Division of Real Estate has been assigned the responsibility of administering the Act.

The Act follows a registration model rather than a licensing model. This means that companies and individuals will register with the Division but will not receive a license. Applicants will not be required to have taken pre-registration education or to have taken a competency examination. Applicants will be required to be fingerprinted and to submit to a criminal background check. They will also be required to obtain a surety bond (\$10,000.00 for individuals and \$25,000.00 for entities), obtain a letter of credit or deposit assets of equivalent value. Individuals will be required to register beginning July 1, 2000 and those entities who have current notifications filed with the Department of Financial Institutions will be required to register with the Division on July 1, 2001.

Unless a person is exempt under the Act, a person may not transact the business of residential mortgage loans in Utah without being registered under the Act. The business of residential mortgage loans is defined in the

Act as making or originating a residential mortgage loan for compensation, directly or indirectly soliciting, processing, placing or negotiating a residential mortgage loan for another, or rendering services related to the origination, processing or funding of a residential mortgage loan including: taking applications, obtaining verifications and appraisals, and communicating with the borrower and lender.

The following, among others, are exempt from the registration requirement: the federal government, a state or political subdivision of a state; an agency created by a governmental entity such as FHA, Fannie Mae, RTC, etc.; a depository institution, its affiliates or employees; attorneys; and certain individuals acting on their own behalf.

A Residential Mortgage Regulatory Commission will be created. The Commission will consist of five members appointed by the Executive Director of the Department of Commerce with the approval of the Governor. Two members will be industry members with at least three years of residential mortgage lending experience. Two members will be from the general public and the fifth member will be the commissioner of the Department of Financial Institutions or the commissioner's designee. Except for the Department of Financial Institutions representative, each will serve for a term of four years unless otherwise determined by the Governor. The Commission will concur with the Division on registration and disciplinary matters and shall advise the Division concerning the administration and enforcement of the Act.

The Act specifies that certain prohibited conduct violates the Act and subjects the registrant to disciplinary action,

continued on page 2

Mortgage Practices Act

continued from page 1

including a fine, revocation, suspension or probation. Such activities as charging excessive fees, giving things of value for referrals, attempting to influence the independent judgment of appraisers and making false statements or representations to induce a lender to extend credit are all prohibited by the Act.

If you, or someone you know, would like to apply to serve on the Residential Mortgage Regulatory Commission, please contact the Division.

You may read House Bill 107 by going to the State Legislature web site at www.le.state.ut.us.



Disciplinary Sanctions

FORREST, NATHAN L., State-Certified Residential Appraiser, Provo. Surrendered his certification, effective March 14, 2000, in lieu of continuing to respond to the Division's investigation of twelve complaints filed against him in Case numbers AP97-06-06, AP97-11-16, AP98-09-06, AP98-10-25, AP98-12-21, AP99-04-11, AP99-08-12, AP99-08-14, AP99-08-22, AP99-09-26, AP99-12-13, and AP20-01-09. Forrest agreed not to reapply for a new license for a minimum of five years, that he will not own or manage a company which appraises in Utah, and that he will not work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, clerical support staff, or in any other capacity for that same period of time.

GORDON, PETER W., State-Certified Residential Appraiser, Springville. Consented to pay a \$500.00 fine, based on an appraisal which violated USPAP by failing to discuss external obsolescent from an adjacent junk yard and by failing to discuss the potential environmental hazard from the junk yard. In mitigation, the appraisal was performed when Mr. Gordon was a registered appraiser and he has since taken the additional education, passed the examination, and become certified.

JUMPER, BLAKE, Registered Appraiser, North Salt Lake. Consented to pay a \$500.00 fine and complete a USPAP course based on an appraisal which violated USPAP by failing to accurately verify and analyze comparable sales data or the listing price of

the home, by failing to show how he valued the site, and by failing to maintain data in his files. In mitigation, the appraisal was performed in 1995, early in Mr. Jumper's career as an appraiser.

OLIVERSON, KEVIN, State-Registered Appraiser, Cedar City. Surrendered his registration, effective April 15, 2000, in lieu of continuing to respond to the Division's investigation of six complaints filed against him in Case Numbers AP99-02-16, AP99-07-06, AP99-07-17, AP99-07-18, AP99-09-22, and AP99-09-24. Oliverson agreed not to reapply for a new license for a minimum of five years, that he will not own or manage a company which appraises in Utah, and that he will not work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, clerical support staff, or in any other capacity, for that same period of time.

PETERSON, B. KENT, State-Certified residential Appraiser, Orem. Surrendered his certification, effective March 14, 2000, in lieu of continuing to respond to the Division's investigation of two complaints filed against him in Case Numbers AP97-07-19, and AP99-09-21. Peterson agreed not to reapply for a new license for a minimum of five years, that he will not own or manage a company which appraises in Utah, and that he will not work for a Utah appraiser as a trainee, unclassified individual earning points for licensure or certification, clerical support staff, or in any other capacity for that same period of time.



Utah Real Estate Appraiser Review

Purpose: To provide licensees with the information and education they need to be successful in competently serving the public

Editor Karen Post
Layout Sharon Kamerath
Regular Contributors Ted Boyer
David Jones
Shelley Wismer

*Utah Real Estate Appraiser Registration
and Certification Board:*

Chairman--Jerry R. Webber
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Stillman, Michael H. Christensen,
Ervin R. Holmes, Thomas Anderson

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Utah Division of Real Estate
Department of Commerce
160 East 300 South (84111)
PO Box 146711

Salt Lake City, UT 84114-6711
(801) 530-6747

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In Memoriam

The Division of Real Estate expresses condolences
to the families of
Brad M. Jensen & Robert J. Sidwell
Utah Certified Residential
appraisers who passed away recently.

USPAP Q & A

Vol. 2, No. 1 - January 2000

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to state and territory appraisal regulators to inform all states and territories of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of USPAP in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems. The ASB USPAP Q&A do not constitute a legal opinion of the ASB.

QUESTION #1:

A lender has requested an appraisal for a home that is being purchased. Then after the purchase, the lender said it will need an "updated" appraisal to reflect a refinance situation? Can I accept an "update" appraisal assignment of this nature? If so, what advice can you provide about what I need to do in the update process?

ANSWER:

USPAP allows appraisers to update previous appraisals of the same property. Advisory Opinion AO-3 specifically addresses updates. In this AO, it is recommended that the following conditions be met before accepting an update assignment:

1. The original appraiser/firm and client are involved
2. The real estate has undergone no significant change since the original appraisal.
3. The time period between the effective date of the original appraisal (or most recent update) and the effective date of the pending update is not unreasonably long for the type of real estate involved.

In the situation you describe, it would appear that the above conditions would be met. In addition, you should be very clear about your role and your assignment. AO-3 recommends that you also specifically reference your original report, being careful to point out the date of that report and the effective date of that appraisal. This is to avoid a reader becoming confused when reading both reports. Further, you should take care to indicate any changes to the property or in the market that have occurred since the time of the original work, as recommended in AO-3.

USPAP does not, and cannot, address what would be an appropriate amount of time between the closing of a loan and the closing of a refinance of such loan. As long as the appraiser is not participating in what they know to be fraud or other illegal activity, he or she may take an assignment of this type.

QUESTION #2:

Were there many changes in the new 2000 edition of USPAP? I'm a reviewer - has Standard 3 been revised?

ANSWER:

A number of revisions have been made in the USPAP 2000, including the ETHICS and COMPETENCY RULES, new definitions, STANDARDS 1, 2, 3, 7, 8, 9 and 10, several Statements, and the guidance provided in several Advisory Opinions. Every appraiser should take steps to learn about these as they may have an impact on his or her appraisal activities.

Several changes have been made to STANDARD 3, which addresses appraisal reviews. Some of these are briefly summarized as follows:

- Statement 1 has been retired, with the pertinent information incorporated into STANDARD 3
- This standard now applies to personal property appraisal reviews, as well as real property appraisal reviews.
- The term "Review Appraiser" has been replaced with "Reviewer," and "Review Appraisal" with "Appraisal Review." These new terms should help avoid confusing implications, such as that an appraisal is always part of a review assignment.
- An appraisal review assignment can now include all, or part of, the work of another appraiser.
- The definition of "Review" in USPAP has been replaced with "Appraisal Review: the act or process of developing and communicating an opinion about the quality of another appraiser's work . . ."
- The activities of the appraisal review function have been more clearly delineated between the reviewer providing an appraisal review opinion, alone, and providing that opinion *plus* his or her own opinion of value (i.e., an appraisal) when that is a second purpose within the same assignment.

continued on page 4

USPAP Q&A

continued from page 3

- In order to satisfy the requirements of STANDARD 1 or 7 when a reviewer's opinion of value is required, a reviewer may extend into his or her own development process those portions of the original appraisal concluded to be credible and in compliance with STANDARD 1, based on an extraordinary assumption. Those items not deemed to be credible or in compliance must be replaced with information or analysis by the reviewer, developed in conformance with STANDARD 1 or 7, as applicable, to produce a credible value opinion.
- The reviewer's scope of work can be different from the scope of the original work under review.
- The reviewer may include his or her own value opinion within the appraisal review report itself without preparing a separate appraisal report. However, changes to the report content by the reviewer to support a separate value conclusion must match, at a minimum, the reporting requirements (Self-Contained, Summary or Restricted Use Appraisal Report) of the report under review.

The above summary is meant to highlight the changes and should not substitute for a thorough reading of STANDARD 3 itself. In addition, the ASB is currently preparing to expose for public comment a draft of a new Advisory Opinion to provide guidance on how a reviewer's opinion of value within an appraisal review assignment affects the scope of work in such an assignment.

QUESTION #3:

I am appraising an apartment complex which includes some personal property such as refrigerators, a lawn mower and several other pieces of maintenance equipment. If the complex sold, these items would sell with it, and all my comparable sales also include similar personal property and equipment. What do I have to do in order to comply with USPAP?



ANSWER:

Standards Rule 1-4(g) of USPAP states:

“An appraiser must analyze the effect on value of any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal.

Comment: Competency in personal property appraisal (see STANDARD 7) or business valuation (see STANDARD 9) may be required when it is necessary to allocate the overall value to the property components. A separate valuation, developed in

compliance with the Standard pertinent to the type of property involved, is required when the value of a non-realty item or combination of such items is significant to the overall value.”

You must first decide if, in your judgement, the personal property is significant to the overall value. If it is significant, you must develop a separate valuation accomplished in compliance with STANDARD 7. This value would be included in your report under the requirements of SR2-2(a), (b), or (c)(ix).

If you decide the value of the personal property is not significant, a separate valuation is not required and there would be no specific reporting requirement. However, you must be clear in your report that your value conclusion includes the personal property.

Also note that this is a specific requirement from which departure is permitted. Thus, you may depart from SR 1-4(g) and perform a limited appraisal by following the requirements in the DEPARTURE RULE of USPAP. These requirements include certain disclosures in the report.

Vol. 2, No. 2 - January 2000

QUESTION #1:

An attorney hired me to prepare an appraisal. He asked that I not prepare a report but rather discuss my conclusions with him orally. I have done that and he concluded that my opinion will not be helpful to his client and therefore does not want a written report. What are my obligations under USPAP in this situation?

ANSWER:

Under the record keeping section of the Ethics Rule “An appraiser must prepare a work file for each assignment. The work file must include the name of the client and the identity, by name or type, of any other intended users; true copies

of any written reports documented on any type of media; *summaries of any oral reports or testimony*, or a transcript of testimony, *including the appraiser's signed and dated certification*; all other data, information, and documentation necessary to support the appraiser's opinions and conclusions and to show compliance with this rule and all other applicable Standards, or references to the location(s) of such other documentation."

(Italics=emphasis added)

Clearly your reporting of your appraisal conclusions to the attorney is an oral report and a summary of such a report needs to be included in the work file. Also, "the appraiser's signed and dated certification."

QUESTION #2:

I am employed in the Business Valuation group of ABC CPA firm. A client requests a valuation, which is beyond the expertise of my group. I go to the Business Valuation Group of XYZ CPA firm where there is an appraiser with the requisite expertise to complete the assignment competently. Do I have any disclosure requirements under USPAP?

ANSWER:

The Competency Rule requires that "Prior to accepting an assignment or entering into an agreement to perform an assignment, an appraiser must properly identify the problem to be addressed and have the knowledge and experience to complete the assignment competently; or alternatively:

1. disclose the lack of knowledge and/or experience to the client before accepting the assignment;
2. take all steps necessary or appropriate to complete the assignment competently; and

3. describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

If the client engages the XYZ CPA firm, and you assist their appraiser who is competent, then no disclosure of your lack of knowledge or expertise is required.

However, if you are contracting with the client to perform the assignment, disclosure of your lack of knowledge or experience to the client before accepting the assignment is required. If the client is still willing to hire you, you must take all steps necessary or appropriate to complete the assignment competently. Describe the lack of knowledge and/or experience and the steps taken to complete the assignment competently in the report.

C

New Appraiser Board Members to Be Appointed

The end of the fiscal year (June 30th) will end the terms of two of the members of the Appraiser Licensing and Certification Board, and will, therefore, create two vacancies on the seven member Board. The vacancies created are for two state-certified appraisers, either Certified Residential or Certified General. These will be gubernatorial appointments for a period of either three or four years.

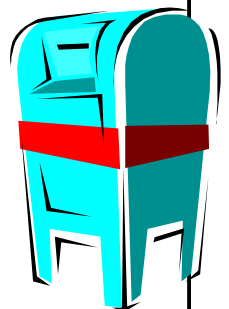
The Board, by law, meets at least quarterly, but more often meets on a monthly basis. The members receive a per diem plus necessary expenses. The Board makes administrative rules regarding licensing, education, record keeping, handling of funds by licensees, property management and standards of conduct. It also conducts administrative hearings relating to licensing or conduct of licensees and education providers, etc.

Anyone interested in being considered for this appointment should contact Ted Boyer, Director of the Division of Real Estate at 530-6747.

Practicing appraisers need to possess the current Utah statute and rules, along with the year 2000 edition of USPAP

Contact:
Utah Division of Real Estate
P O Box 146711
Salt Lake City, UT 84114-6711
(801) 530-6747

If you pick them up:
USPAP -- \$6.50
Rules --- \$3.00
If we mail them:
USPAP -- \$8.50
Rules --- \$5.00



Key Features of The 2000 Uniform Standards of Professional Appraisal Practice (USPAP)

The 2000 edition of USPAP is the result of exposure drafts that occurred on April 27, April 28, June 25, and August 11, 1999. On the basis of written responses and substantial public testimony at Appraisal Standards Board (ASB) public hearings, the ASB formally adopted the 2000 USPAP on September 15, 1999. Based on the input of professional appraisal organizations, educators, regulators, and state enforcement agencies, the effective date of the 2000 USPAP is January 1, 2000.

Format: Consecutive line numbers have been added to the text beginning with the preamble and concluding at the end of Statement 9 (SMT-9). Consecutive line numbers have also been added to each Advisory Opinion. The line numbers are intended to facilitate references to the document, including the identification of changes from the previous edition.

Ethics Rule: The Confidentiality section has been changed to include the appraiser's obligation to "act in good faith with regard to the legitimate interests of the client in the use of confidential information and in the communication of assignment results." The term "confidential factual data" has been replaced with "confidential information." The comment in the Confidentiality section has been modified to clarify that the section does not apply when confidential elements have been removed through redaction or the process of aggregation. The definition of confidential information was clarified by removing the reference to "publicly available" information. The revised definition focuses on information received from and identified by the client as being confidential when given to the appraiser.

Competency Rule: The Competency Rule has been changed to acknowledge that different kinds of competency in addition to "geographic" competency may be necessary in an assignment. These include, but are not limited to, "an appraiser's familiarity with the specific type of property, a market, a geographic area, or an analytical method." When these or potentially other

forms of competency are necessary for developing credible results, appraisers are responsible for having the requisite competency to complete the assignment properly, or they must follow the steps outlined in the Rule.

Definitions: Modifications were made to the definitions of Confidential Information, Personal Property, and Report. The definition of Review was modified and renamed Appraiser Review. One new definition was added: Assignment Results.

Standard 1: Standards Rule 1-2(f) was modified to identify more specifically the parties associated with the appraiser's scope of work obligations. Accordingly, the phrase "third party" was replaced with "the client, an intended user, or the appraiser's peers in the same or a similar assignment."

Standard 2: Standards Rule 2-4 was changed to clarify what compliance with the Rule means and to permit departure when the appraiser is not able to comply. References to "the extent that is both possible and appropriate" and "including expert testimony" have been deleted.

Standard 3: Changes to Standard 3 restructure the requirements for better organization, consistency, and understandability in appraisal review, clarify a number of concepts in the Standard, and incorporate personal property valuation into the Standard's text. As mentioned above, the term Review was modified and renamed Appraisal Review. More specifically, the comment section of the Standard clarifies the nature of appraisal review and scope of work obligations. Standards Rules 3-1 and 3-2 have been expanded to achieve better clarity and consistency with the other development and reporting standards. Standards Rule 3-3 was added to clarify how the Standards applies to oral appraisal review reports. Statement 1 (STM-1), which concerned clarifications to the Comment on

Standards Rule 3-1(g) in previous editions, was retired (see below).

Standards 7 and 8: With the exception of Standards Rule 8-5, Standards 7 and 8 were comprehensively updated to include terminology familiar to personal property appraisers, to ensure consistency, where appropriate, with the structure and concepts adopted in other parts of the document, and to assist personal property appraisers and users of personal property appraisals in understanding and applying the Standards in practice.

Standards 9 and 10: With the exception of Standards Rules 10-1(c) and 10-5, Standards 9 and 10 were comprehensively updated to include terminology familiar to business appraisers, to ensure consistency, where appropriate, with the structure and concepts adopted in other parts of the document, and to assist business appraisers and users of business and intangible asset appraisals in understanding and applying the Standards in practice.

Statement 1: As the subject matter of this Statement was incorporated into the changes associated with Standard 3, Stm-1 was retired. However, its number and place in the document have been retained for editorial consistency.

Statements 3, 4, 6, 7 and 9: These Statements have been edited to add references and/or text consistent with the terminology used in the context of Standard 8. For example, previous references to “real estate” have been eliminated and replaced with “property” or “appraisals.”

Advisory Opinions: Advisory Opinion 19 (AO-19), “Unacceptable Assignment Conditions in Real Property Appraisal Assignments,” was added.

Note: Administrative edits were made to all sections of the document to improve consistency.

Mortgage Brokers to be Regulated

A New Commission to be Appointed

The Governor has signed the new Utah Residential Mortgage Practices Act which allows for mortgage brokers in the state of Utah to now be registered with the Division of Real Estate.

Part of the act allows for the creation of the Residential Mortgage Regulatory Commission. The Commission will be comprised of five members: two from the mortgage industry, and two from the general public. The fifth member will be either the commissioner from the Department of Financial Institutions or someone he has designated to act on his behalf. The two industry members must have at least three years of residential mortgage lending experience.

This Commission will be appointed by the Executive Director of the Department of Commerce with the approval of the Governor. If you or anyone you know would be interested in serving on this Commission, please notify Ted Boyer, Director of the Division of Real Estate at 530-6747.



For Your Information

- There will be no Appraiser Licensing/Certification Board meeting in the month of July. The next scheduled meetings are Tuesday, April 11th; Tuesday, May 9th; Tuesday, June 13th, and Tuesday, August 8th. If it is your intention to attend a board meeting, first call the Division of Real Estate to confirm the date and time.

What Exactly is a “True Copy”?

UCA 61-2b-34 defines what an appraiser’s record keeping requirements are. It states that “(1) All persons registered, licensed, or certified under this chapter shall retain for a period of five years the original or a *true copy* of:

- (a) each written contract engaging his services for real estate or real property appraisal work;
 - (b) each appraisal report prepared or signed by him; and
 - (c) all supporting data assembled and formulated by the appraiser in preparing each appraisal report.”
- [*italics=emphasis added*]

Administrative Rule 162-106-6 defines exactly what is meant by a “true copy”. It says: “The true copy of an appraisal report which an appraiser is required by Section 61-2b-34(1) to retain shall be a photocopy or other exact copy of the report as it was provided to the client, *including the appraiser’s signature.*”

[*italics added*]

John Hancock

Does this mean that the appraiser cannot maintain his records in a computer data base because they need to have a signature? Not necessarily.

Administrative Rule 162-106-6.3.3.2 allows for digital signatures under certain circumstances. That rule states that “A digital signature may be used in place of a handwritten signature only if: (a) the software program which generates the digital signature has a security feature; and (b) the appraiser ensures that his signature is protected and that no one other than the appraiser has control of that signature.” Under these circumstances, *signed* records may be retained in the computer.

Otherwise, a copy of the signed report delivered to the client must be retained for the five years.

One additional requirement regarding signatures: Rule 162-3.3.2 states that: “Appraisers may not affix their signatures to appraisal reports by means of a signature stamp.”

Why Might Your Experience Application Fail In Review?

By Mike Christensen
Appraiser Board Member

The Real Estate Appraiser Licensing and Certification Board has had an increasing number of Certified classification applicants who have failed their experience review and appeal. Well qualified and screened individuals have accepted appointments from the Board to serve on the review committee and voluntarily complete these important preliminary review services. These are not cursory reviews which are taken lightly. Each applicant’s review takes several hours to complete. It must be stressed that the issuance of a “professional” license, which is intended to “protect the public,” is at stake.

When a member of the Experience Review Committee makes a recommendation to the Board that the quality of the appraiser’s work does or does not meet the minimum standards established by the Uniform Standard of Professional Appraisal Practice (USPAP), the Board will generally accept that recommendation. The Board members do not individually review each applicant’s submitted package unless an appeal has been filed. If an appeal is filed, the Division of Real Estate will schedule an “informal hearing” which allows the applicant to respond to the Experience Review Committee member’s concerns. Applicants who think that by appealing to the Board that the Experience Review Committee member’s recommendation will automatically be discarded, are mistaken. The burden is the sole responsibility of the applicant to “demonstrate that [they] meet the required licensing criteria of good moral character, honesty, integrity, truthfulness, and competency.”

It is in this forum that the Experience Review Committee member’s noted problems become readily apparent. These problems include the lack of supervision and training, unreasonable numbers of reported appraisals completed in a given time frame, inconsistencies in experi-

ence log record keeping, lack of appraisal knowledge and technique, inadequate ethical standards, misuse and reliance of automatically generated appraisal software computations, and mistakes resulting from the careless use of “boiler plate” reports.

Certified Residential applicants are required to provide several examples of work for review, including 2-4 family reports. The small residential income property appraisal reports are a major stumbling block for many applicants due to significant errors found in them. MLS “sold” and active listing data are generally considered inappropriate for use in a rental survey (current data and no historical data is required). It is appropriate to use actual rental survey techniques to provide the intended user of the report with current and accurate market information (including knocking on doors in the subject neighborhood). A working knowledge of land valuation techniques and terms is also necessary. Descriptions of the condition of the improvements and consistency with depreciation applications is another apparent problem.

All of these concerns should have been taken care of in the training process of the applicant. If you are a supervisory appraiser, you are doing nobody any favors, including yourself, if disciplinary action results by not adequately training those who are counting on your guidance. Although very educational, an experience review informal hearing can be an uncomfortable place to be unless you are prepared.

A Note To Supervisory Appraisers

By Mike Christensen

Due to the new appraiser law effective May 3, 1999, several “Unclassified” appraisers are working under the supervision of Licensed and Certified appraisers. Those appraisers who are “Unclassified” do not receive these newsletters from the Division. It is the responsibility of the Licensed and Certified supervisory appraisers to inform them of all information provided within the newsletters. Those who are supervisory appraisers should make themselves aware of all laws, standards, ethics, and rules surrounding their supervisory appraisal activities.

Temporary Practice Form Online

In an effort to simplify and standardize the application process of the temporary practice of real estate appraisers, the Association of Appraiser Regulatory Officials (AARO) has now posted a universal temporary practice application online. The states of Pennsylvania, Florida, Ohio, Tennessee, Montana, Wyoming and North Carolina have elected not to participate in AARO’s efforts. Appraisers should contact these states directly for information on temporary practice.

The online application is a four-step process. First, appraisers must click on a Temporary Practice forms button and complete the two-page application form, the affidavit of applicant, and the consent to service or process form. The affidavit and consent forms must be signed and notarized.

The next step involves selecting the state in which you wish to apply for a temporary practice permit. The AARO site will link you to the Web page of the temporary practice state where information on supplemental requirements and fees are available. Follow the instructions carefully in order to fully comply with all requirements of the temporary practice state.

Step three is to mail the forms and fees to the state board of the temporary practice state. The state will then obtain a history report from the National Registry.

Finally the temporary practice state will issue the temporary practice permit if all requirements have been met by the applicant.

To check out AARO’s new streamlined process for yourself, visit AAROps Website at www.aaro.net or go to the Division of Real Estate web site at www.commerce.state.ut.us.



It's Important to Keep Old Copies of USPAP

When you have annual publications of important documents, such as USPAP, there is a tendency to destroy the old copy when you receive the new version. We all want to be up to date with the latest information, and generally move the latest issue of USPAP to the top of our desk, tossing the out-of-date copies.

There is good reason to have copies of past issues of USPAP in the event there is a need to review the rules that were in effect on the date the appraisal report was prepared.

Lawsuits and complaints often arise two or more years after the date the appraisal report was prepared. Attorneys on both sides will be reviewing the rules in effect on the date of the completed appraisal report, not the rules in effect today. Four years ago you were complying with USPAP that was effective on that date, but it may be difficult to prove your position without a copy of the appropriate version.

This is especially true with the substantial changes that have been made to USPAP over the past several years. Versions vary from year to year with substantial changes. Many state Appraiser Boards and Legislatures have written rules that require the appraiser to comply with the "current" version of the USPAP, meaning the version that was in effect on the date the appraisal report was prepared.

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Proposed Rules Changes

The Utah Appraiser License and Certification Board has approved that the process of rule making begin for the following proposed rules changes. Some will have significant impact on the appraisal profession, and it is suggested that each appraiser licensee become familiar with the proposed rules changes and be prepared to make written comment either for or against each specific rule change. The comment period will run until May 9, 2000.

Rule 103 defines requirements regarding appraisal course and instructor certifications. The proposed changes to this rule deal with how a school administers its final examinations.

R162. Commerce, Real Estate.

R162-103. Appraisal Education Requirements.



R162-103-3. Course Certification.

103.3.1 Each school requesting approval of a course designed to meet the education requirements of licensure or certification shall make application for approval on a form prescribed by the Division and shall pay the applicable fee. The application shall include, and the Board may consider, the following information in determining eligibility for approval:

(a) A course outline including a description of the course, the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, and three to five learning objectives for every three hours;

(b) Indication of any method of instruction other than lecture method including: a slide presentation, cassette, video tape, movie, home study, or other.

(c) A copy of the three final examinations of the course~~[-if one is administered,]~~ and the answer keys which ~~[is]~~ are used to determine if the student has passed the course;

(d) An explanation of what the school procedure is ~~[if the student fails the final examination]~~ for maintaining the security of the final exams and the answer keys;

103.3.7 A maximum of 10% of the required class time may be spent in testing, including review test and final examination. A student cannot challenge a course or any part of a course of study by taking an exam in lieu of attendance.

103.3.7.1 If a student fails a school final examination, he will not be allowed to retest for a minimum of three days. The student will not be allowed to retake the same final exam, but will be given a new exam with different questions.

103.3.7.2 If the student fails the final exam a second time, he will not be allowed to retest for a minimum of two weeks at which time he will be given an entirely new exam with completely new questions. If the student fails this third exam, he will fail the course.

Rule 162-104.18.2(h) is better clarified with the following language:

(h) Commercial, multi-family, industrial, or other nonresidential ~~[or multiple]~~

Remember

**You Must Notify
the Division
-- in Writing --
Within 10 Days of:**



- a change of personal address
- a change of business address
- a change of name
- a change of personal or business telephone number
- a conviction of a criminal offense
- a filing of bankruptcy

family] use acreage [~~which is nonresidential~~]

Fewer than 10 acres 4 points

[~~100~~]10 acres or more 6 points

The most significant changes are found in R162-105 which deals with an appraisers Scope of Authority. These rule changes define what the authority of the “Unclassified” person is....what this person can do or not do. And since it will be the responsibility of the “Supervising Appraiser” to assure that the unclassified person is acting accordingly, there is some further direction given to that supervising appraiser.

R162. Commerce, Real Estate.

R162-105-1. Scope of Authority.

105.1 Transaction value. “Transaction value” means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than \$250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Unclassified individuals.

105.3.1 Unclassified individuals who have not yet accumulated 100 experience points and who have not successfully completed the education required for licensure may perform the following duties under the direct supervision of a state-licensed or state-certified appraiser: typing an appraiser’s research notes; typing an appraisal report; accompanying an appraiser on an inspection visit to a property; assisting an appraiser in measuring a property; taking photographs of specific properties selected and inspected by the appraiser; performing routine calculations; and obtaining copies of assessment records, deeds, maps, and data from real property data bases relating to properties selected by the

appraiser.

105.3.1.1 The Unclassified Individual may accumulate the first 100 experience points with each duty listed in the following table being worth 20% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1 or 104-18.2. not to exceed the maximum number of points awarded for each property. Applicants must have experience in at least five of the following categories and no more than one-third of the experience can come from any one of the following categories.

(a) type an appraisers research notes 20% of total points

(b) type an appraisal report 20% of total points

(c) accompany an appraiser on an inspection visit
20% of total points

(d) assist an appraiser in measuring property
20% of total points

(e) take photographs of specific properties selected and inspected by the appraiser 20% of total points

(f) perform routine calculations 20% of total points

(g) obtain copies of assessment records, deeds, maps and data from real property databases relating to properties selected by the supervising appraiser 20% of total points

105.3.1.[+]² Unclassified individuals who have not yet accumulated 100 experience points and who have not successfully completed the education required for licensure may not participate in: selecting comparables for an appraisal assignment; making adjustments to comparables; drafting an appraisal report; and, except when working in the presence of a state-licensed or state-certified appraiser, inspecting a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, or measuring a property.

105.3.2 Unclassified individuals who have accumulated 100 experience points and have successfully completed at least 30 hours of the education required for licensure may act in the capacity of an appraisal “trainee” under the direct supervision of a state-licensed or state-certified appraiser. A “trainee” is permitted to have more than one supervising appraiser.

105.3.2.1 An appraiser “trainee” may, under the direct supervision of a state-licensed or state-certified appraiser, participate in selecting comparables for an appraisal assignment, participate in making adjustments to comparables, draft appraisal reports, and when working in the presence of a state-licensed or state-certified appraiser, inspect a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measure a property.

105.3.2.2 The Unclassified Individual who is a “trainee” may accumulate experience points with each duty listed in the following table being worth 33.3% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1 or 104-18.2 not to exceed the maximum number of points awarded for each property. “Trainee” experience must be earned in at least three of the following categories and no more than one-third of their experience can come from any one of the following categories.

(a) participate in selecting comparables for an appraisal assignment
33.3% of total points

(b) participate in making adjustments to comparables

33.3% of total points

(c) draft appraisal reports 33.3% of total points

(d) when working in the presence of a state-licensed or state-certified appraiser, inspect a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measure the property

33.3% of total points

105.3.3 All experience points cannot be earned in one 12-month period. For applicants for licensure, a maximum of 300 points will be credited for any one 12-month period. Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application. Applicants who believe the Experience Points Schedule does not adequately reflect their experience may refer to Section 104-17.

105.3.[3]4 All unclassified individuals are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.[4]5 A classified appraiser who supervises an unclassified individual shall be responsible for the training and direct supervision of the unclassified individual ~~[and shall require the unclassified appraiser to maintain a log in form satisfactory to the Board which shall contain, at minimum, the following information for each appraisal:]~~.

105.3.5.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report.

105.3.5.2 A classified appraiser shall require the unclassified appraiser to maintain a log in a form satisfactory to the Board which shall contain, at minimum, the following information for each appraisal.

~~[105.3.4.1](a) Type of property;~~

~~[105.3.4.2 Client name and address;]~~

~~[105.3.4.3](b) Address of appraised property;~~

~~[105.3.4.4](c) Description of work performed;~~

~~[105.3.4.5](d) Number of work hours;~~

~~[105.3.4.6](e) Signature and state license/certification~~

number of supervising appraiser

105.3.[4]6 The unclassified individual ~~[shall]~~ may maintain a separate appraisal log for each supervising appraiser.

~~[105.3.4.1 Type of property;~~

~~105.3.4.2 Client name and address;~~

~~105.3.4.3 Address of appraised property;~~

~~105.3.4.4 Description of work performed;~~

~~105.3.4.5 Number of work hours;~~

~~105.3.4.6 Signature and state license/certification number~~

of the supervising appraiser.

~~105.3.4.7 The unclassified individual shall maintain a separate appraisal log for each supervising appraiser.]~~

Key: real estate appraisal

Rule 162-107 defines what is Unprofessional Conduct. This rule defines other responsibilities of the supervising appraiser.

R162. Commerce, Real Estate.

R162-107. Unprofessional Conduct.

R162-107-1. Unprofessional Conduct

107.1 Unprofessional conduct includes the following specific acts or omissions:

107.1.1~~[(a)]~~ Violating or disregarding a disciplinary order of the Utah Appraiser ~~[Registration]~~Licensing and Certification Board or the division; ~~[and]~~

107.1.2~~[(b)]~~ Signing an appraisal report containing a statement indicating that an appraiser has inspected a property if the appraiser has not inspected the property~~[-];~~

107.1.3 Signing an appraisal report as the supervising appraiser without having given adequate supervision to the registered appraiser or the unclassified assistant;

107.1.4 Allowing an appraiser in his employ, or an appraiser whom he is otherwise responsible to supervise, to:

(a) exceed the authority of the subordinate appraiser's classification;

(b) engage in conduct which is a violation of Title 61, Chapter 2b.

107.1.5 Allowing a non-appraiser to:

(a) exceed the authority granted to an unclassified person by these rules;

(b) engage in conduct which would be a violation of Title 61, Chapter 2b if done by an appraiser; or

107.1.6 Splitting appraisal fees with an unclassified person, except that an unclassified person may be paid a reasonable salary or a reasonable hourly rate for lawful services actually performed in connection with appraisals.

107.2 The Board may appoint members of the appraisal industry to serve as a Technical Advisory Panel to provide advice to the Division concerning technical appraisal issues and conduct constituting unprofessional conduct.

Key: real estate appraisal, conduct

The final vote on the acceptance of these rules changes will be made at the Appraiser Board meeting on May 9, 2000. Written comment may be made to Ted Boyer, Division of Real Estate, PO Box 146711, Salt Lake City, UT 84114-6711 until April 30, 2000.

**Do you ever need to know whether someone is
Licensed or Certified with the Division?**

You can check our web site at:

www.commerce.utah.gov

**This will get you to the Department of
Commerce web site, and from there you can link
to the Division of Real Estate and access the
database of licensees.**